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Supreme Court, U. S.
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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1978

No.

JEANINE R. SMITH,
Petitioner,

VS.

PATRICIA ROBERTS HARRIS, Secretary of Health,
Education and Welfare,
Respondent.

PETITION FOR WRIT OF CERTIORARI
to the United States Court of Appeals
for the Ninth Circuit

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PETITION FOR WRIT OF CERTIORARI
to the United States Court of Appeals for the Ninth Circuit

Petitioner Jeanine R. Smith, successor party in interest to Rosette V. Guidet, deceased, prays that a writ of certiorari issue to review the opinion and judgment of the United States Court of Appeals for the Ninth Circuit.

OPINION BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit is reported at 597 F.2d 152 (9th Cir. 1979), and is set forth in Appendix A to this petition. The Judgment and Order of the United States District Court for the Eastern District of California granting defendant's motion for summary judgment is not reported and is set forth as Appendix B.

The judgment of the Court of Appeals held that Section 1631(b) of the Social Security Act, 42 U.S.C. § 1383(b), and the regulations of the Secretary of Health, Education and Welfare (HEW) interpreting that section, prevent the reimbursement for services and necessities of life provided on a credit basis to an eligible Supplemental Security Income (SSI) recipient during his lifetime when such recipient dies before SSI benefits to which he is entitled are received. It held further that unless there is a surviving eligible spouse, payments owed cannot be paid to anyone despite the provision of services in reliance upon SSI eligibility. The judgment, therefore, severely impedes the ability of the elderly, disabled, and indeed, all those dependent upon the SSI program for their livelihood, to obtain the necessities of life on a credit arrangement during periods of underpayment.

JURISDICTION

The judgment of the Court of Appeals was entered on March 9, 1979. The petition for rehearing with suggestion for rehearing *en banc* was denied on June 4, 1979. On August 10, 1979, this Court granted a 10-day extension of time to file this petition for writ of certiorari. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED FOR REVIEW

1. Whether Section 1631(a)(2) of the Social Security Act, 42 U.S.C. § 1383(a)(2), prohibits, in all circumstances, the posthumous payment of SSI benefits to a representative payee.

2. Whether Section 1631(b) of the Social Security Act, 42 U.S.C. § 1383(b), prohibits payment of a deceased SSI applicant's or recipient's benefits to a representative payee other than an eligible spouse.

3. Whether the regulations of the Secretary of HEW, 20 C.F.R. §§ 416.542(b) and 416.601(a) (1974), are invalid.

STATUTES AND REGULATIONS INVOLVED

Set forth in Appendix C are the pertinent provisions of the Social Security Act, 42 U.S.C. §§ 1381, 1381a, 1382(a), and 1383; and the regulations of the Social Security Administration, Department of Health, Education and Welfare, 20 C.F.R. §§ 416.536, 416.542(b), 416.601(a), and 416.601(b).

STATEMENT OF THE CASE

This case arises under the SSI program, whose very purpose is to assist the aged, blind, and disabled in obtaining the necessities of life. Its purpose is accomplished by providing monthly cash payments to all those deemed eligible under income, resources, disability, and age standards. *See, e.g.,* 42 U.S.C. §§ 1381a and 1382. This case concerns the method of payment of benefits and entitlement.

On occasion, SSI payments in less than the correct amount are made to eligible recipients. Oftentimes, for reasons of inadvertence, error, or administrative delay, payments due eligible recipients under the program are

not made at all.[1] When payment is due, but less than the correct amount or no payment is received, an underpayment is deemed to have occurred. 20 C.F.R. § 416.536 (1975). It is at the time of an underpayment that many SSI recipients must attempt to rely on credit arrangements to obtain the necessities of life.

The gravamen of this case is that the Secretary's policy affirmed by the Court of Appeals prohibiting posthumous payment of underpayments to representative payees who provided necessities of life on a credit basis to eligible SSI recipients during periods of underpayment violates the purposes and literal provisions of the SSI program and the Social Security Act. As Judge Merrill pointed out in his dissenting opinion:

> "Under the Secretary's construction of § 1631(b), as adopted by the majority opinion, the recipient is deprived of any ability to secure credit on the basis of his SSI payments that would survive death. Without such credit, private homes for the aged and infirm are not likely to welcome those without independent financial resources and the Act fails to provide adequately

[1]It is relevant to note that in the months April through September, 1978, there were an average of 4,247,210 aged, blind, and disabled persons receiving SSI benefits. The national case error rate for this period as regards underpayments was 4.2% of the total cases. (The term "case" is used here synonymously with "person." Thus, on the average, 178,383 persons during that period received no payment or were paid less than their full entitlement. Source: telephone interviews on September 6, 1979, with Mr. Peter Wheeler, Director of Quality Assurance Program, and Ms. Lanna Kennedy, Research Analyst, Office of Research and Statistics, Social Security Administration, United States Department of Health, Education and Welfare, Baltimore, Maryland. Under the Secretary's regulations and the judgment of the Court of Appeals, these persons would have to find other sources to meet their current needs or attempt to rely on credit arrangements as in the case of petitioner's grandmother.

> for those most in need of their SSI payments." *Smith v. Califano*, 597 F.2d 152, 158 (9th Cir. 1979).

Petitioner Smith is the granddaughter and successor party in interest of Rosette V. Guidet. Mrs. Guidet was born in 1895. Before her death on March 6, 1974, she was an impoverished, blind and widowed amputee. On January 1, 1974, Mrs. Guidet was placed in a board and care facility by her granddaughter's husband with the assistance of the Sacramento, California, County Welfare Department. Her placement in the facility was made with the understanding that payment for care and support received would be from SSI benefits under Title XVI of the Social Security Act, 42 U.S.C. §§ 1381, *et seq.* Respondent Secretary does not dispute Mrs. Guidet's entitlement to SSI benefits. *Smith v. Califano*, 597 F.2d at 154 n.2. Mr. Smith, husband of the petitioner, signed the admissions agreement which provided for the payment of $250 in advance.

In January and February of 1974, Mrs. Guidet completed and submitted all the necessary application forms for SSI benefits, but died on March 6, 1974, before the Social Security Administration (SSA) completed its processing of her application. Without completing an eligibility determination, SSA denied payment of the charges accrued by Mrs. Guidet in the facility because they reasoned that, pursuant to the provisions of Section 1631(b) of the Social Security Act, payment could only be made to a surviving spouse of the deceased eligible recipient who was also an SSI recipient in the month the deceased eligible recipient died. If there were no surviving eligible spouse, the payments due to the deceased recipient

could not be paid to anyone. *Smith v. Califano,* 597 F.2d at 154.

Smith appealed the SSA determination to an administrative law judge (ALJ), who determined that Mrs. Guidet was entitled to SSI benefits for January and February of 1974, and that payments for the charges accrued at the facility by Mrs. Guidet should be made either directly to the facility itself or

> "to a representative payee, to be used solely to reimburse . . . for necessaries furnished to the deceased applicant during the period for which the benefits are due, if such necessaries were provided in reasonable reliance on the needy applicant's future payment for such necessaries out of supplemental security income payments not yet received but to which entitlement existed for the period of furnishing such necessaries." *Id.*

The Appeals Council of HEW rejected the decision of the ALJ on the basis that, under the regulations of the Secretary of HEW, "payment through a representative payee is contemplated only where the eligible individual is living." *Id.* Both the ALJ and the Appeals Council found that the "record does not reflect any reason to deny payment other than the applicant's death." *Id.*

Suit was brought on May 5, 1975, in the United States District Court for the Eastern District of California by Jeanine R. Smith, successor party in interest to the claim of Rosette V. Guidet, seeking a reversal of the decision of the Appeals Council of HEW, which was based on an erroneous interpretation of Section 1631 of the Social Security Act, 42 U.S.C. § 1383. Smith also requested that

the court invalidate certain regulations implementing Sections 1631(a) and (b) of the Social Security Act as contravening the purposes of the Act, direct the Secretary of HEW to pay the disputed benefits to an appropriate representative payee, and award attorneys' fees and costs. The jurisdiction of the District Court was premised on 42 U.S.C. § 405(g) and Section 1631(c)(3) of the Social Security Act, 42 U.S.C. § 1383(c)(3).

Cross motions for summary judgment were filed on October 18, 1976. The court granted the Secretary's motion and denied Smith's motion on October 22 of that year. On December 20, 1976, Smith appealed the District Court's judgment to the United States Court of Appeals for the Ninth Circuit. On March 9, 1979, the Ninth Circuit affirmed the judgment of the Eastern District of California, and a rehearing was denied on June 4, 1979.

REASONS FOR GRANTING THE WRIT

This case presents significant issues involving the rights of eligible SSI beneficiaries to receive benefits guaranteed to them under the Social Security Act and the SSI program.

The ruling of the Court of Appeals essentially deprives hundreds of thousands of SSI beneficiaries of any ability to secure credit during periods of underpayment because it precludes payment of benefits posthumously, except where there is a surviving eligible spouse. There is a real possibility that qualified potential SSI beneficiaries will be refused much needed care or services until the administrative paperwork on their claims has been fully

processed, which may take weeks or months, even though there is no doubt as to eligibility.

The judgment of the Court of Appeals effectively "rewards" the Secretary for the delay in processing SSI applications if the otherwise eligible beneficiary dies before the paperwork is completed and he therefore does not receive benefits to which he is entitled. The decision also critically affects those current SSI recipients who experience an interruption in the payment of benefits for reasons including administrative error or inadvertence. The "reward" to the Secretary in the event of death of the recipient during a period of underpayment is made all the more unjust in such circumstances where nonpayment was due solely to the fault of the SSA.

This case thus presents important questions of federal law concerning the interpretation of two key subsections of the SSI program, created under the Social Security Act Amendments of 1972, Pub. L. No. 92-603. These are Sections 1631(a)(2) and 1631(b), 42 U.S.C. §§ 1383(a)(2) and 1383(b). This Court's review pursuant to Supreme Court Rule 19 is therefore of utmost importance.

A. The Court of Appeals Erroneously Interpreted Section 1631(a) of the Social Security Act, 42 U.S.C. § 1383(a), as Precluding the Posthumous Payment of Supplemental Social Security Income Underpayments to a Representative Payee

It is clear from a reading of Subsections (1) and (2) of 42 U.S.C. § 1383(a) that the intent of Congress was to authorize the Secretary to provide for payments to an individual, other than the beneficiary, or an appropriate

public or private agency, where payments directly to a beneficiary would fail to effectuate the purposes of the Act.

Section 1383(a)(1) provides for the payment of benefits in a time and manner which will "best effectuate the purposes" of the program. Subpart (a)(2) of that section allows that when payment is to be made to an individual, it may also be made to his spouse or, if the Secretary deems it appropriate, to any other person or public or private agency "who is interested in or concerned with the welfare of such individual." 42 U.S.C. § 1383(a)(2). The obvious intent of these two provisions, when taken together, is to allow payment of benefits to be made in those instances when the eligible beneficiary is not in a position, for whatever reason, to attend to his or her own financial interests.

A plain reading of the statute reveals that there is absolutely no distinction created between living and deceased beneficiaries as regards the designation of representative payees. It further appears that there is no explicit prohibition against payment of past due benefits to a representative payee of the eligible recipient as reimbursement for federally eligible needs met during the life of the recipient by other than the SSI payment. Indeed, to deny such payment will not effectuate the purposes of the Act, but will instead create an irrational distinction which will serve to hinder the purpose of providing assistance to eligible recipients. It makes little sense to allow such payment if the decedent left a surviving spouse, but to *deny* payment if there is no surviving widow or widower.

The Court of Appeals also relied upon the legislative history of the provision which ultimately became Section

1631(b) of the Act as a basis for its decision that the representative payee provisions of Section 1631(a) could not be applied to Section 1631(b). The legislative history provides:

> "Overpayments and underpayments.—. . .[I]f less than the correct amount of benefits had been paid, the Secretary would pay the balance due to the underpaid individual. If the individual dies before the amount due has been paid to him, or before he negotiates the check representing the correct payment, the amount due would be paid to his eligible spouse, if there is one, and the payment would not be taken into account in determining the spouse's need under this program. *Underpayments, however, would not be paid to the estate of a deceased individual since that would not further the objective of meeting the current needs of individuals.* Overpayments, on the other hand, could be recovered from the estate of a deceased individual. H.Rep. No. 231, 92d Cong., 2d Sess., reprinted in [1972] U.S.Code Cong. & Admin.News 4989, 5141." *Smith v. Califano,* 597 F.2d at 155 (emphasis added).

The significant language in the House Report is that which precludes payments "to the estate of a deceased individual since that would not further the objective of meeting the current needs of individuals." The Court of Appeals concluded on the basis of such language that the representative payee provisions of Section 1631(a) could not be incorporated into the underpayment section provision of Section 1631(b). *Smith v. Califano,* 597 F.2d at 157.

As the dissent below accurately pointed out, however, what would be accomplished by payment to the representative payee is *not* a blanket payment to the *estate* of the

deceased, but rather a payment to a representative payee, outside of the estate of the deceased. There is no reason or justification for allowing these payments to be reached by the *general* creditors of the deceased by allowing them to be paid to the estate of the deceased, but neither is there any reason or justification for denying underpayments as reimbursement for the current needs of an eligible beneficiary due solely to the fact that, although there may be a representative payee ready, willing, and able to assume the financial responsibilities, there is no surviving spouse. While Congress may have intended to preclude wasteful payment to the estate of the deceased beneficiary as not in furtherance of the purposes of the Act, it could not have intended to preclude payment for needs intended to be met with SSI and actually provided during the lifetime of the recipient. Such would thwart the very goals Congress set out to achieve by enacting the SSI program.

The literal language of Section 1631(a) and the purposes of the SSI program compel a conclusion, therefore, that the Section 1631(a) representative payee provisions are applicable to the underpayment provisions of Section 1631(b) notwithstanding the intervening death of the SSI recipient.

B. The Court of Appeals Erroneously Interpreted Section 1631(b), 42 U.S.C. § 1383(b), as Disallowing Posthumous Payment of SSI Underpayments to Anyone Other Than the Eligible Spouse of the Deceased Beneficiary

Section 1631(b) of the Social Security Act provides that underpayments may be made to the eligible beneficiary *or*

to his eligible spouse. It is the position of the petitioner that, under Section 1631(b), payment to a representative payee constitutes payment to an eligible individual. According to the Secretary's regulation found at 20 C.F.R. § 416.601(b) (1974), payment to the representative payee of an eligible individual constitutes payment to such eligible individual. The court below was of the opinion that Section 416.601(b) does not apply to Section 1631(b), because Congress intended to limit the payment of underpayments to the individual or his eligible spouse. *Smith v. Califano,* 597 F.2d at 156 n. 7. Such a view is contrary to the overall purposes of the Social Security Act. Moreover, the distinction which the Court of Appeals draws between regular payments under Section 1631(a) and underpayments under Section 1631(b) does not withstand close scrutiny. The Court of Appeals relies heavily on the provisions of Section 1631(a) allowing payment to "other persons" and concludes that since that language is not used in the Section 1631(b) underpayment provisions, Congress intended to limit payment of underpayments to only the eligible individual or eligible surviving spouse. *Smith v. Califano,* 597 F.2d at 156 n.7.

Underpayments made pursuant to Section 1631(b) are oftentimes made to representative payees despite the fact that Section 1631(b) does not precisely set out persons *other* than the eligible individual or spouse to whom payment can be made. *Smith v. Califano,* 597 F.2d at 158. Even the Secretary does not honor the distinction between regular payments and underpayments drawn by the Court of Appeals. As the dissent points out:

> "If full force is to be given to the literal distinction between §§ 1631(a) and (b), on which the majority relies, the result would be that while regular payments can be made to a representative payee, adjustments for underpayments never can. I can see little sense in such a distinction. But more: *As I understand the practices of the Secretary and his interpretations of the regulation, the emphasis has not been on the difference between regular payments and underpayments. Rather, it has been on whether the recipient is living or dead.* The Appeals Council in this case relied on this living/dead distinction as quoted by the government in its brief. '[I]t is evident from § 416.601(a) that payment through a representative payee is contemplated only where the eligible individual is living.' The cited regulation does not expressly impose this condition. But in any event it would appear that the Secretary quite sensibly does not hesitate to adjust for an underpayment by paying a representative if the recipient is alive." *Smith v. Califano,* 597 F.2d at 158 (emphasis added).

The Court of Appeals' distinction would preclude payment in the amount of the underpayment to representative payees. The result would be a direct payment of adjustments for underpayment to, for example, drug addicts or alcoholics, violating the clear prohibition of Sections 1631(a)(2) and 1611(e)(3)(A), 42 U.S.C. § 1382(e)(3)(A), forbidding payments of *any* sort directly to such persons.

Under a logical, common sense reading of the statute, using 20 C.F.R. § 416.601(b) (1974), there is no reason why the adjusted benefits provided for in Section 1631(b) cannot pass to a representative payee as prescribed in

Section 1631(a)(2). This reading of Section 1631(b) best furthers the intent of the statute.

This Court has made it clear that in interpreting a statute it "will not look merely to a particular clause in which general words may be used" but will take in connection with the statute the entire enactment and "the objects and policy of the law, as indicated by its various provisions, and give to it such a construction as will carry into execution the will of the Legislature. *Brown v. Duchesme,* 19 How. 183, 194, 15 L. Ed. 595 (1857)." *Kokoszka v. Belford,* 417 U.S. 642, 650 (1974).

Section 1631(b), when read in conjunction with Section 1631(a)(2) and examined in light of the policy outlined by Congress in Title XVI of the Social Security Act, allows underpayments to be made to a representative payee of a qualified SSI beneficiary other than a qualified eligible spouse, as reimbursement for the federally eligible needs provided to the beneficiary even after that person has died.

C. The Secretary's Regulations at 20 C.F.R. §§ 416.542(b) (1975) and 416.601(a) (1974) Are Unreasonable and Invalid

The regulations promulgated by the Secretary purportedly for the purpose of promoting the goals of the Social Security Act are in fact inconsistent with those goals, and are therefore invalid, to the extent that they prohibit the posthumous payment of SSI benefits to the representative payee of a qualified beneficiary to reimburse for the needs of the beneficiary met during his lifetime. Title 20, Code of Federal Regulations, Section 416.542(b) (1975) reads:

> "If a recipient dies before the amount due him had been paid to him . . . the amount of the underpayment may be paid only to his surviving spouse and then only if such spouse was eligible for supplemental security income benefits. . . . No underpayment may be paid to the estate of any underpaid recipient, the estate of the surviving spouse, or to any survivor other than the living-with eligible spouse."

This provision, which precludes payment of underpayments to others than an eligible surviving spouse, is inconsistent with the intent of Congress and with the stated policy and express provisions of Sections 1631(a) and (b) of the Social Security Act discussed *supra.*

Title 20, Code of Federal Regulations, Section 416.601(a) (1974) reads:

> "(1) When it appears to the Administration that the interest of a recipient of payments under title XVI of the Act would be served thereby, certification of payment may be made by the Administration, *regardless of the legal competency or incompetency of the recipient eligible thereto, either* for direct payment to such recipient, or for his use and benefit to a relative or some other person (including an appropriate public or private agency) selected by the Administration as the 'representative payee' of the recipient." (Emphasis added.)

The Secretary interprets this regulation to mean that payment through a representative payee is contemplated only where the individual is living. *Smith v. Califano,* 597 F.2d at 158. Not only does the above quoted regulation not make any mention of whether the beneficiary must be alive for the representative payee provisions to be

applicable but such an interpretation is invalid as unnecessarily restrictive and contra to the intent of Congress and to the stated purposes and the express language of the Social Security Act.

The intent of Congress, as evidenced in a broad reading of the statute, is to assist qualified individuals to obtain the basic necessities of life. To deny adjustments for underpayment to a representative payee as reimbursement for the needs supplied to a now deceased beneficiary, but to allow such payments to be made to the representative payee of a living beneficiary, contravenes this intent. As such, these regulations are void.

CONCLUSION

The decision of the Court of Appeals creates an anomalous situation whereby the Secretary of HEW is "rewarded" for his delay or inadvertence in providing benefits to those entitled under the SSI program. If he delays long enough and the eligible recipient dies, pursuant to the decision of the Court of Appeals, no payment need be made whatsoever, notwithstanding the fact that the eligible applicant or recipient may be deprived of any ability to secure credit during his lifetime on the basis of his SSI eligibility and payments which may survive his death. Such result contravenes the clear language of Section 1601(a) of the Act, 42 U.S.C. §1381(a), which provides that "every aged, blind, or disabled individual who is determined . . . to be eligible . . . shall be paid benefits by the Secretary of HEW." As Judge Merrill pointed out in his dissent, "the act, with the Secretary's blessing, seems to work most zealously against its own apparent purpose." *Smith v.*

Califano, 597 F.2d at 158. That purpose is "to free the poor from want and the indignities of poverty." *Cardinale v. Mathews*, 399 F. Supp. 1163, 1164 (D.D.C. 1975).

For the reasons set forth above, a writ of certiorari should issue to review the decision of the United States Court of Appeals for the Ninth Circuit.

Respectfully submitted,

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(Appendices Follow)

Appendices

Appendix A

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JEANINE R. SMITH, Successor Party in Interest, ROSETTE V. GUIDET, deceased. *Plaintiff-Appellant,* vs. CASPAR W. WEINBERGER, Secretary of H.E.W. *Defendant-Appellee.*	No. 77-1296 OPINION

[Filed March 9, 1979]

Appeal from the United States District Court
for the Eastern District of California

Before: MERRILL and CHOY, Circuit Judges, and MURRAY*, District Judge.

CHOY, Circuit Judge:

Jeanine R. Smith, as successor in interest to Rosette V. Guidet, appeals from the district court's granting of summary judgment in favor of the Secretary of Health, Education and Welfare (the Secretary). We affirm.

I. *Statement of the Case*

The parties are agreed on the essential facts. Ms. Smith's grandmother, Rosette V. Guidet, was born in 1895.

*The Honorable William D. Murray, Senior United States District Judge for the District of Montana, sitting by designation.

She was widowed and suffering from a sight limitation and amputated leg. On January 1, 1974, Mrs. Guidet was placed in a board and care facility by Smith's husband with the assistance of the Sacramento County Welfare Department. Though it was understood that the costs of care would be paid by public assistance programs,[1] Mr. Smith signed the admissions agreement, providing for payment of $250 a month in advance.

In late January and early February, Mrs. Guidet completed the necessary applications for supplemental security income under Title XVI of the Social Security Act (the Act), 42 U.S.C. § 1381. Mrs. Guidet died on March 6, 1974, before the Social Security Administration (SSA) completed its processing of her application. Without completing an eligibility determination,[2] the SSA denied payment to Mrs. Smith or her successors because:

> Section 1631(b) of the Social Security Act provides that money due a supplemental security income recipient who dies may be paid only to the deceased individual's surviving husband or wife who was also a supplemental security income recipient in the month the deceased individual died. If there is no such surviving husband or wife, the payments due the deceased recipient cannot be made to anyone.

[1]In his findings of fact, adopted by the Appeals Council, the administrative law judge wrote:

> The placement was made with the understanding that Rosette V. Guidet would be eligible to receive Supplemental Security Income benefits for her board and care.

[2]The administrative law judge noted: "Although at the time some questions were unsolved, the present record does not reflect any reason to deny payment other than the applicant's death." The Government acknowledges that for purposes of this appeal, it should be assumed that there was no reason to deny benefits for January and February other than Mrs. Guidet's death.

Upon appeal, an administrative law judge (ALJ) concluded that Mrs. Guidet's benefits for January and February should be paid either to the health facility or "to another appropriate representative payee." The ALJ wrote:

> [I]f a person entitled to supplemental security income payments dies before receiving them, . . . payment, wholly or in part, may be made to a representative payee, to be used solely to reimburse . . . for necessaries furnished to the deceased applicant during the period for which the benefits are due, if such necessaries were provided in reasonable reliance on the needy applicant's future payment for such necessaries out of supplemental security income payments not yet received but to which entitlement existed for the period of furnishing such necessaries.

The Appeals Council of HEW on its own motion reviewed the ALJ's decision. Rejecting the ALJ's conclusion, the Appeals Council wrote:

> Where an individual has died, there can be no payment to her even through a representative payee. Similarly, the applicant's attorney argues in his excellent brief that under Section 416.601(b) of the Regulations, payment to a representative payee constitutes payment to an eligible individual. The Appeals Council does not disagree with this contention; however, it is evident from Section 416.601(a) that payment through a representative payee is contemplated only where the eligible individual is living.

Ms. Smith then sought review of the Appeal Council's decision in the district court.[3] Noting that the health

[3]The parties correctly assert that the Appeals Council's decision represented a final administrative decision appealable in district court under 42 U.S.C. §§ 405(g) and 1383(c). The district court's grant of summary judgment constitutes a final judgment, appealable to this court under 28 U.S.C. § 1291.

facility had not yet received payment, Ms. Smith asked that the district court reverse the Appeals Council's decisions as legally erroneous, invalidate those regulations that she asserted were inconsistent with a proper reading of the Act, direct the Secretary to pay Mrs. Guidet's benefits "to an appropriate representative payee," and award costs and attorney's fees. On cross motions for summary judgment the district court granted the Secretary's motion and denied Ms. Smith's motion.[4]

II. *Interpretation of § 1631*

The parties agree that the payment involved in the present dispute constitutes an underpayment under the Act. Section 1631(b) of the Act, 42 U.S.C. §1383(b), provides in part:

> Whenever the Secretary finds that more or less than the correct amount of benefits has been paid with respect to any individual, proper adjustment or recovery shall . . . be made by appropriate adjustments in future payments to such individual or by recovery from or *payment to such individual or his eligible spouse* (or by recovery from the estate of either). . . .

(Emphasis added). The Secretary argues that this provision and the regulations adopted thereunder[5] prevent his

[4]This court has recently written:

> Summary judgment may be granted " 'only where there is no genuine issue of any material fact or where viewing the evidence . . . in the light most favorable to the adverse party, the movant is clearly entitled to prevail as a matter of law.' " *Caplan v. Roberts*, 506 F.2d 1039, 1042 (9th Cir. 1974), *See* Fed.R.Civ.P. 56.

Loya v. Immigration & Naturalization Serv., . . . F.2d . . .; . . . (9th Cir. Oct. 13, 1978), slip op. at 3356. The parties here have agreed on the material facts, the dispute involving the proper interpretation of relevant statutes and regulations. Because the case could thus be resolved as a matter of law, summary judgment was the proper procedural device.

[5]*See* note 7 *infra*.

making posthumous underpayments to anyone except an eligible spouse. *See* 39 Fed. Reg. 2012 (1974); 40 Fed. Reg. 47762 (1975). Ms. Smith counters that subsection (b) does not proscribe payment to appropriate "representative payees." We believe that the Secretary's interpretation is correct.

First, the language of §1631(b) is clear on its face. It specifically limits the Secretary to giving underpayments only to "such individual or his eligible spouse." By contrast, where Congress intended to allow payments to other individuals, it specified such allowance, as in subsection (a)(2) of §1631.[6] As we wrote in another context, "[t]he language of a statute is the best and most reliable index of its meaning, and where the language is clear and unequivocal it is determinative of its construction." *Monte Vista Lodge v. Guardian Life Insurance Co.*, 384 F.2d 126, 128 (9th Cir. 1967), *cert. denied*, 390 U.S. 950 (1968).

Second, the legislative history indicates that Congress intended that subsection (b) be interpreted in the Secretary's manner. The House Report said of the provision which became §1631(b):

> *Overpayments and underpayments.* — . . . [I]f less than the correct amount of benefits had been paid, the Secretary would pay the balance due to the underpaid individual. If the individual dies before the amount due has been paid to him, or before he negotiates the check representing the correct payment, the amount due would be paid to his eligible spouse, if there is one, and the payment would not be taken into account in determining the spouse's need under this program.

[6]*See* page 6 *infra*.

> Underpayments, however, would not be paid to the estate of a deceased individual since that would not further the objective of meeting the current needs of individuals. Overpayments, on the other hand, could be recovered from the estate of a deceased individual.

H. Rep. No. 92-231, 92d Cong., 2d Sess., *reprinted in* [1972] U.S. Code Cong. & Ad. News 4989, 5141. Later the House Report reiterated that subsection (b)

> provides that when more or less than the correct amount of benefits has been paid to an individual, the Secretary will make proper adjustments in future payments or by recovery from or payment to such individual or his eligible spouse, or by recovering from the estate of either . . . .

Id. at 5326. These comments demonstrate that Congress intended subsection (b) to operate as the Secretary here contends.

Third, though the courts remain the final interpreters of an act of Congress, *see FMC v. Seatrain Lines, Inc.*, 411 U.S. 726, 745-46 (1973); *Hart v. McLucas*, 535 F.2d 516, 520 (9th Cir. 1976), the courts have also repeatedly recognized that an administrative agency's reasonable interpretation of the statute which it administers is deserving of considerable respect. *See New York Department of Social Services v. Dublino*, 413 U.S. 405, 421 (1973); *Udall v. Tallman*, 380 U.S. 1, 16-17 (1965); *White v. United States Civil Service Commission*, 468 F.2d 1357, 1358 (9th Cir. 1972).[7] In the instant case the Secretary's reasonable read-

[7]The Secretary's regulations are consistent with his interpretation of subsection (b). Section 416.542(b), 20 C.F.R., reads in part:

> If a recipient dies before the amount due him has been paid to him, or before he endorses the check representing the correct

ing of the Act is consistent with both the language of the statute and congressional pronouncements. We are thus most reluctant to disregard the Secretary's interpretation.

We conclude, as did the Appeals Council, that subsection (b) does not authorize the disbursement of Mrs. Guidet's aid to a "representative payee."

Though apparently acknowledging that on its face subsection (b) does not authorize such payment, Ms. Smith argues that when that subsection is read in conjunction with other parts of the Social Security Act a statutory basis for such payment emerges. First, she notes that the

> payment, the amount of the underpayment may be paid only to his surviving spouse and then only if such spouse was eligible for supplemental security income benefits and was living with the underpaid recipient when he died or was not separated from him for 6 months at the time of death. No underpayment may be paid to the estate of any underpaid recipient, the estate of the surviving spouse, or to any survivor other than the living-with eligible spouse.

If the Secretary's regulations conflicted with the proper meaning of the statute they were intended to implement, they would of course be invalid. *See* Townsend v. Swank, 404 U.S. 282, 286 (1971); Hart v. McLucas, 535 F.2d 516, 520 (9th Cir. 1976). But where the regulations are reasonable and reflect the language and policy underlying the statute, the courts should carefully consider the regulations in determining the proper interpretation of a statute. *See* Northern Indiana Pub. Serv. Co. v. Porter County Chapter of the Izaak Walton League of America, Inc., 423 U.S. 12, 15 (1975); Ehlert v. United States, 402 U.S. 99, 105 (1971); Bone v. Hibernia Bank, 493 F.2d 135, 139 (9th Cir. 1974).

Ms. Smith refers to § 416.601, which reads in part:

> (a) . . . When it appears to the Administration that the interest of a recipient of payments under title XVI . . . would be served thereby, certification of payment may be made by the Administration . . . either for direct payment to such recipient, or for his use and benefit to a relative or some other person (including an appropriate public or private agency) selected by the Administration as the "representative payee" of the recipient. . . .
>
> (b) . . . Payments made in accordance with paragraph (a) of this section to a representative payee of an eligible individual

ALJ found that because Title II of the Social Security Act provides for making underpayments to individuals other than the eligible person's surviving spouse, "[t]he parts of the statute must be read reasonably together to accomplish their purpose. The authorization in the one subsection [of Title II] is meant to be understood in all the other sections [of the Act, including Title XVI]."

Section 204(a)(2) and (d) of Title II, 42 U.S.C. § 404(a)(2) & (d), includes very detailed provision for making underpayments to persons other than a deceased individ-

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or eligible spouse shall constitute payments to such eligible individual or eligible spouse.

Ms. Smith contends that § 416.601 applies to § 1631(b) and therefore payment to either her or the health facility as a "representative payee" would constitute payment to "such individual" within the meaning of § 1631(b). The Secretary responds that § 416.601 cannot be applied to § 1631(b).

We think the Secretary is correct. To invoke the § 416.601(b) equivalency rule in the context of § 1631(b) would mean that the Secretary could pay any "appropriate person." This would in effect abrogate the limits of § 1631(b) that Congress intended to apply to underpayments. Instead, underpayments would essentially be subject to the same rule as are regular payments under § 1631(a)(2). That is, payment could be made to such individual or eligible spouse—the scheme common to subsections (a)(2) and (b)—or to an appropriate other person—a method statutorily limited to subsection (a)(2). We cannot disregard congressional intent to limit underpayments under subsection (b) more than regular payments under subsection (a)(2).

This conclusion is reinforced by the language of § 416.601. That language parallels the language Congress employed in § 1631(a)(2), suggesting that the Secretary intended the regulation to apply in that context and not in the different § 1631(b) payment scheme. Finally, we note that the Secretary's reasonable interpretation of his own regulation should be accorded great respect by a court interpreting the regulation. *See Northern Indiana Pub. Serv. Co.*, 423 U.S. at 15; *Ehlert*, 402 U.S. at 105; *Bone*, 493 F.2d at 139. This is particularly so here because Congress gave to the Secretary the task of implementing congressional intent. § 1631(a)(1), 42 U.S.C. § 1383(a)(1). In sum, we conclude that the Secretary's reading of his regulations is consistent with and supports the proper reading of § 1631.

ual's spouse, including to "the legal representative of the estate of the deceased." § 204(d)(7). But when Congress wished to incorporate parts of Title II into the newer Title XVI, it did so explicitly. For example, subsection (d)(1) of § 1631, the very section with which we are concerned, selectively incorporates into Title XVI procedures specified in parts of Title II. Moreover, we cannot infer such incorporation here because the Title II provision for paying "the legal representative of the estate" conflicts directly with the language of § 1631(b) and the House Report's statement that "[u]nderpayments . . . would not be paid to the estate of a deceased since that would not further the objective of meeting the current needs of individuals."

Ms. Smith responds next that § 1631(a)(2) indicates the propriety of payment to a payee other than the eligible individual or his spouse. That provision reads in part:

> Payments of the benefit of any individual may be made to any such individual or to his eligible spouse (if any) or partly to both, or, if the Secretary deems it appropriate to any other person (including an appropriate public or private agency) who is interested in or concerned with the welfare of such individual (or spouse).

Regardless of the proper interpretation of this provision *vis-a-vis* regular SSI payments, Congress has provided that underpayments should be distributed in accordance with subsection (b), specifically dealing with underpayments. And "[f]undamental maxims of statutory construction require that a specific section be found to qualify a general section. A specific statutory provision will govern even though general provisions, if standing alone, would

include the same subject." *Monte Vista Lodge,* 384 F.2d at 129; *see Clifford F. MacEvoy Co. v. United States ex rel. Calvin Tompkins Co.*, 322 U.S. 102, 107 (1944).

Ms. Smith argues finally, and most powerfully, that her construction better satisfies the general congressional policy underlying Title XVI of helping the elderly and disabled. She notes that families will be less willing to assist their aged and disabled relatives if they fear that they will not obtain reimbursement should their relative pass away before payment. She also notes that the Secretary's interpretation in essence "rewards" the Secretary for failing to process claims quickly and accurately because the Government may avoid paying monies otherwise due should an eligible individual without an eligible spouse die before payment (as in this case). Finally, she contends that the Secretary's interpretation creates an incongruous scheme wherein the Secretary can pay regular SSI benefits under subsection (a)(2) but not underpayments under subsection (b) to individuals other than an eligible spouse.

We have a good deal of sympathy for Ms. Smith's policy claims. We are afraid, however, that in light of the legislative history and language of § 1631(b), we must reject her effort to redesign the statute. For as the Supreme Court has recently written:

> [A]s the second Mr. Justice Harlan said, when speaking for the Court in another context, a statute "is not an empty vessel into which this Court is free to pour a vintage that we think better suits present-day tastes." *United States v. Sisson,* 399 U.S. 267, 297 (1970). Considerations of this kind are for Congress, not the courts.

National Broiler Marketing Association v. United States, 46 U.S.L.W. 4620, 4623 (U.S. June 12, 1978).[8]

[8]In the interpretation of his regulations the Secretary has recognized the same limitation. In January of 1974 the Secretary first proposed regulations dealing with underpayments, writing: "If there is no surviving eligible spouse, no one can receive the underpayment." 39 Fed. Reg. 2012 (1974). After receiving comments about the proposed regulations, the Secretary noted:

> With respect to the limitation . . . on payment of an underpayment due a deceased individual, the comments said the prohibition against paying underpayments to the estate of the recipient seemed to violate the spirit of the Social Security Act and might deprive an individual responsible for the medical or burial costs of funds to pay them. However, section 1831(b) of the Social Security Act authorized the payment of an underpayment only to a surviving spouse eligible for supplemental security income and living with the individual when he died.

AFFIRMED.

Jeanine R. Smith, etc. v. Joseph Califano, etc.

No. 77-1296

MERRILL, Circuit Judge, dissenting:

I dissent. I would reverse and restore the decision of the ALJ.

Under the Secretary's construction of § 1631(b), as adopted by the majority opinion, the recipient is deprived of any ability to secure credit on the basis of his SSI payments that would survive death. Without such credit, private homes for the aged and infirm are not likely to welcome those without independent financial resources and the Act fails to provide adequately for those most in need of their SSI payments. The Act, with the Secretary's blessing, seems to work most zealously against its own apparent purpose.

The majority opinion relies on the fact that § 1631(b) does not include the words "other persons" which are to be found in § 1631(a). However, Regulations 416.601(a) and (b) are broadly stated to permit payment to one other than the eligible individual in all cases where it appears to the administration that the interest of the recipient would be served. That should cover this case.

In footnote 7 the majority opinion rejects the application of those regulations to § 1631(b), stating that to apply them would "abrogate the limits of [that section] that Congress intended to apply to underpayments. Instead, underpayments would essentially be subject to the same rule as are regular payments under § 1631(a)(2)."

If full force is to be given to the literal distinction between §§ 1631(a) and (b), on which the majority relies, the result would be that while regular payments can be made to a representative payee, adjustments for underpayments never can. I can see little sense in such a distinction. But more: As I understand the practices of the Secretary and his interpretations of the regulation, the emphasis has not been on the difference between regular payments and underpayments. Rather, it has been on whether the recipient is living or dead. The Appeals Council in this case relied on this living/dead distinction as quoted by the government in its brief. "[I]t is evident from § 416.601(a) that payment through a representative payee is contemplated only where the eligible individual is living." The cited regulation does not expressly impose this condition. But in any event it would appear that the Secretary quite sensibly does not hesitate to adjust for an underpayment by paying a representative if the recipient is alive.

The legislative history as quoted in the majority opinion explicitly provides only that underpayments are not to be made to *the estate* of a deceased recipient. This makes sense to me, since otherwise general creditors could reach the payment. However, nothing in the quoted legislative history would preclude applying Regulation 416.601(b) to § 1631(b) and to Regulation 416.542(b) so long as payment did not reach the estate. The ALJ as quoted in the majority opinion showed just how that could be done. The payment could be made directly to the representative payee on his making a proper showing of entitlement.

The question, then, as I perceive it, is not whether the statutory distinction between underpayment and regular payment must be respected literally. (The Secretary himself apparently does not respect it.) The question is whether (assuming that payment is not made to the estate of a deceased recipient) the distinction between living and dead recipients (not required by the statute, or even explicitly by the regulations), can be said to satisfy the general congressional policy underlying the Act. I would say no.

Appendix B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JEANINE R. SMITH, Successor Party in Interest, ROSETTE V. GUIDET, deceased, *Plaintiff,* v. CASPAR WEINBERGER, Secretary of Health, Education, and Welfare, *Defendant.*	CIVIL NO. S-75-322-TJM JUDGMENT

[Original Filed October 22, 1976]

This Court having heretofore made and entered its Order Granting Defendant's Motion for Summary Judgment, And Denying Plaintiff's Motion for Summary Judgment, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that defendant have and take judgment against plaintiff in the above entitled cause, and that plaintiff take nothing by reason of her complaint.

DATED: Oct 22, 1976

THOMAS J. MACBRIDE
Chief United States
District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JEANINE R. SMITH, Successor Party in Interest, ROSETTE V. GUIDET, deceased, *Plaintiff*, v. CASPAR W. WEINBERGER, Secretary of Health, Education, and Welfare, *Defendant*.	CIVIL NO. S-75-322-TJM ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

[Original Filed October 22, 1976]

The above entitled cause came on regularly for hearing on October 18, 1976 before the Honorable Thomas J. MacBride, Chief United States District Judge, on the parties' cross-motions for summary judgment. Plaintiff appeared by and through her attorney Thomas E. Hookano, Esq. Defendant appeared by and through his attorney Richard W. Nichols, Chief Assistant U. S. Attorney. The matter having been submitted to the Court, and the Court being fully apprised in the premises, and good cause appearing,

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that plaintiff's motion for summary judgment be, and the same is hereby, denied;

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant's motion for summary judgment be, and the same is hereby, granted.

DATED: Oct 22, 1976

THOMAS J. MACBRIDE
Chief United States
District Judge

Appendix C

42 U.S.C. § 1381

§ 1381. Statement of purpose; authorization of appropriations

For the purpose of establishing a national program to provide supplemental security income to individuals who have attained age 65 or are blind or disabled, there are authorized to be appropriated sums sufficient to carry out this subchapter.

42 U.S.C. § 1381a

§ 1381a. Basic entitlement to benefits

Every aged, blind, or disabled individual who is determined under part A to be eligible on the basis of his income and resources shall, in accordance with and subject to the provisions of this subchapter, be paid benefits by the Secretary of Health, Education, and Welfare.

42 U.S.C. § 1382(a)

PART A—DETERMINATION OF BENEFITS

§ 1382. Eligibility for benefits—Definition of eligible individual

(a)(1) Each aged, blind, or disabled individual who does not have an eligible spouse and—

(A) whose income, other than income excluded pursuant to section 1382a(b) of this title, is at a rate of not more than $1,752 (or, if greater, the amount determined under section 1382f of this title) for the calendar year 1974, or any calendar year thereafter, and

(B) whose resources, other than resources excluded pursuant to section 1382b(a) of the title, are not more than (i) in case such individual has a spouse with

42 U.S.C. § 1382(a)

whom he is living, $2,250, or (ii) in case such individual has no spouse with whom he is living, $1,500,

shall be an eligible individual for purposes of this subchapter.

(2) Each aged, blind, or disabled individual who has an eligible spouse and—

(A) whose income (together with the income of such spouse), other than income excluded pursuant to section 1382a(b) of this title, is at a rate of not more than $2,628 (or, if greater, the amount determined under section 1382f of this title) for the calendar year 1974, or any calendar year thereafter, and

(B) whose resources (together with the resources of such spouse) other than resources excluded pursuant to section 1382b(a) of this title, are not more than $2,250,

shall be an eligible individual for purposes of this subchapter.

42 U.S.C. § 1383

§ 1383. Procedure for payment of benefits—Time, manner, form, and duration of payments; promulgation of regulations

(a)(1) Benefits under this subchapter shall be paid at such time or times and in such installments as will best effectuate the purposes of this subchapter, as determined under regulations (and may in any case be paid less frequently than monthly where the amount of the monthly benefit would not exceed $10).

42 U.S.C. § 1383

(2) Payments of the benefit of any individual may be made to any such individual or to his eligible spouse (if any) or partly to each, or, if the Secretary deems it appropriate to any other person (including an appropriate public or private agency) who is interested in or concerned with the welfare of such individual (or spouse). Notwithstanding the provisions of the preceding sentence, in the case of any individual or eligible spouse referred to in section 1382(e)(3)(A) of this title, the Secretary shall provide for making payments of the benefit to any other person (including an appropriate public or private agency) who is interested in or concerned with the welfare of such individual (or spouse).

(3) The Secretary may by regulation establish ranges of incomes within which a single amount of benefits under this subchapter shall apply.

(4) The Secretary—

(A) may make to any individual initially applying for benefits under this subchapter who is presumptively eligible for such benefits and who is faced with financial emergency a cash advance against such benefits in an amount not exceeding $100; and

(B) may pay benefits under this subchapter to an individual applying for such benefits on the basis of disability or blindness for a period not exceeding 3 months prior to the determination of such individual's disability or blindness, if such individual is presumptively disabled or blind and is determined to be otherwise eligible for such benefits, and any benefits so paid prior to such determination shall in no event be considered overpayments for purposes of subsection

(b) of this section solely because such individual is determined not to be disabled or blind.

(5) Payment of the benefit of any individual who is an aged, blind, or disabled individual solely by reason of blindness (as determined under section 1382c(a)(2) of this title) or disability (as determined under section 1382c(a)(3) of this title), and who ceases to be blind or to be under such disability, shall continue (so long as such individual is otherwise eligible) through the second month following the month in which such blindness or disability ceases.

Overpayments and underpayments; adjustment, recovery, or payment of amounts by Secretary

(b) Whenever the Secretary finds that more or less than the correct amount of benefits has been paid with respect to any individual, proper adjustment or recovery shall, subject to the succeeding provisions of this subsection, be made by appropriate adjustments in future payments to such individual or by recovery from or payment to such individual or his eligible spouse (or by recovery from the estate of either). The Secretary shall make such provision as he finds appropriate in the case of payment of more than the correct amount of benefits with respect to an individual with a view to avoiding penalizing such individual or his eligible spouse who was without fault in connection with the overpayment, if adjustment or recovery on account of such overpayment in such case would defeat the purposes of this subchapter, or be against equity or good conscience, or (because of the small amount involved) impede efficient or effective administration of this subchapter.

Hearing to determine eligibility or amount of benefits; time within which to request hearing; time for determinations of Secretary pursuant to hearing; judicial review

(c)(1) The Secretary is directed to make findings of fact, and decisions as to the rights of any individual applying for payment under this subchapter. The Secretary shall provide reasonable notice and opportunity for a hearing to any individual who is or claims to be an eligible individual or eligible spouse and is in disagreement with any determination under this subchapter with respect to eligibility of such individual for benefits, or the amount of such individual's benefits, if such individual requests a hearing on the matter in disagreement within sixty days after notice of such determination is received, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing affirm, modify, or reverse his findings of fact and such decision. The Secretary is further authorized, on his own motion, to hold such hearings and to conduct such investigations and other proceedings as he may deem necessary or proper for the administration of this subchapter. In the course of any hearing, investigation, or other proceeding, he may administer oaths and affirmations, examine witnesses, and receive evidence. Evidence may be received at any hearing before the Secretary even though inadmissible under the rules of evidence applicable to court procedure.

(2) Determination on the basis of such hearing, except to the extent that the matter in disagreement involves a disability (within the meaning of section 1382c(a)(3) of this title), shall be made within ninety days after the individual requests the hearing as provided in paragraph (1).

(3) The final determination of the Secretary after a hearing under paragraph (1) shall be subject to judicial review as provided in section 405(g) of this title to the same extent as the Secretary's final determinations under section 405 of this title.

Procedures applicable; prohibition on assignment of payments; representation of claimants; maximum fees; penalties for violations

(d)(1) The provisions of section 407 of this title and subsections (a), (d), (e), and (f) of section 405 of this title shall apply with respect to this part to the same extent as they apply in the case of subchapter II of this chapter.

(2) The Secretary may prescribe rules and regulations governing the recognition of agents or other persons, other than attorneys, as hereinafter provided, representing claimants before the Secretary under this subchapter, and may require of such agents or other persons, before being recognized as representatives of claimants, that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their cases. An attorney in good standing who is admitted to practice before the highest court of the State, Territory, District, or insular possession of his residence or before the Supreme Court of the United States or the inferior Federal courts, shall be entitled to represent claimants before the Secretary. The Secretary

may, after due notice and opportunity for hearing, suspend or prohibit from further practice before him any such person, agent, or attorney who refuses to comply with the Secretary's rules and regulations or who violates any provision of this paragraph for which a penalty is prescribed. The Secretary may, by rule and regulation, prescribe the maximum fees which may be charged for services performed in connection with any claim before the Secretary under this subchapter, and any agreement in violation of such rules and regulations shall be void. Any person who shall, with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant or beneficiary under this subchapter by word, circular, letter, or advertisement, or who shall knowingly charge or collect directly or indirectly any fee in excess of the maximum fee, or make any agreement directly or indirectly to charge or collect any fee in excess of the maximum fee, prescribed by the Secretary, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall for each offense be punished by a fine not exceeding $500 or by imprisonment not exceeding one year, or both.

Administrative requirements prescribed by Secretary; criteria; reduction of benefits to individual for noncompliance with requirements

(e)(1)(A) The Secretary shall, subject to subparagraph (B), prescribe such requirements with respect to the filing of applications, the suspension or termination of assistance, the furnishing of other data and material, and the

reporting of events and changes in circumstances, as may be necessary for the effective and efficient administration of this subchapter.

(B) The requirements prescribed by the Secretary pursuant to subparagraph (A) shall require that eligibility for benefits under this subchapter will not be determined solely on the basis of declarations by the applicant concerning eligibility factors or other relevant facts, and that relevant information will be verified from independent or collateral sources and additional information obtained as necessary in order to assure that such benefits are only provided to eligible individuals (or eligible spouses) and that the amounts of such benefits are correct.

(2) In case of the failure by any individual to submit a report of events and changes in circumstances relevant to eligibility for or amount of benefits under this subchapter as required by the Secretary under paragraph (1), or delay by any individual in submitting a report as so required, the Secretary (in addition to taking any other action he may consider appropriate under paragraph (1)) shall reduce any benefits which may subsequently become payable to such individual under this subchapter by—

(A) $25 in the case of the first such failure or delay,

(B) $50 in the case of the second such failure or delay, and

(C) $100 in the case of the third or a subsequent such failure or delay,

except where the individual was without fault or good cause for such failure or delay existed.

Furnishing of information by Federal agencies

(f) The head of any Federal agency shall provide such information as the Secretary needs for purposes of determining eligibility for or amount of benefits, or verifying other information with respect thereto.

Reimbursement to States for interim assistance payments; definitions; agreement; hearing provisions inapplicable to disagreements concerning payments

(g)(1) Notwithstanding subsection (d)(1) of this section and subsection (b) of this section as it relates to the payment of less than the correct amount of benefits, the Secretary may, upon written authorization by an individual, withhold benefits due with respect to that individual and may pay to a State (or a political subdivision thereof if agreed to by the Secretary and the State) from the benefits withheld an amount sufficient to reimburse the State (or political subdivision) for interim assistance furnished on behalf of the individual by the State (or political subdivision).

(2) For purposes of this subsection, the term "benefits" with respect to any individual means supplemental security income benefits under this subchapter, and any State supplementary payments under section 1382e of this title or under section 212 of Public Law 93-66 which the Secretary makes on behalf of a State (or political subdivision thereof), that the Secretary has determined to be due with respect to the individual at the time the Secretary makes the first payment of benefits. A cash advance made pur-

suant to subsection (a)(4)(A) of this section shall not be considered as the first payment of benefits for purposes of the preceding sentence.

(3) For purposes of this subsection, the term "interim assistance" with respect to any individual means assistance financed from State or local funds and furnished for meeting basic needs during the period, beginning with the month in which the individual filed an application for benefits (as defined in paragraph (2)), for which he was eligible for such benefits.

(4) In order for a State to receive reimbursement under the provisions of paragraph (1), the State shall have in effect an agreement with the Secretary which shall provide—

(A) that if the Secretary makes payment to the State (or a political subdivision of the State as provided for under the agreement) in reimbursement for interim assistance (as defined in paragraph (3)) for any individual in an amount greater than the reimbursable amount authorized by paragraph (1), the State (or political subdivision) shall pay to the individual the balance of such payment in excess of the reimbursable amount as expeditiously as possible, but in any event within ten working days or a shorter period specified in the agreement; and

(B) that the State will comply with such other rules as the Secretary finds necessary to achieve efficient and effective administration of this subsection and to carry out the purposes of the program established by this subchapter, including protection of hearing rights for any individual aggrieved by action taken by

the State (or political subdivision) pursuant to this subsection.

(5) The provisions of subsection (c) of this section shall not be applicable to any disagreement concerning payment by the Secretary to a State pursuant to the preceding provisions of this subsection nor the amount retained by the State (or political subdivision).

20 C.F.R. § 416.536 (1975)

§ 416.536 Underpayments—defined.

An underpayment can occur only with respect to a period for which a recipient filed application (where required) for benefits and met all conditions of eligibility therefor. An underpayment, including any amounts of State supplementary payments which are due and administered by the Social Security Administration, is:

20 C.F.R. § 416.536 (1975)

(a) Nonpayment, where payment for a quarter (or month, where applicable) was due but was not made, and

(b) Payment of less than the amount due for any quarter (or month, where applicable).

20 C.F.R. § 416.542(b) (1975)

(b) *Underpaid recipient dead—underpayment payable.* If a recipient dies before the amount due him has been paid to him, or before he endorses the check representing the correct payment, the amount of the underpayment may be paid only to his surviving spouse and then only if such spouse was eligible for supplemental security income bene-

20 C.F.R. § 416.542(b) (1975)

fits and was living with the underpaid recipient when he died or was not separated from him for 6 months at the time of death. No underpayment may be paid to the estate of any underpaid recipient, the estate of the surviving spouse, or to any survivor other than the living-with eligible spouse.

20 C.F.R. § 416.601 (1974)

§ 416.601 Payments on behalf of a recipient.

(a) *Payments to recipient or representative payee.* (1) When it appears to the Administration that the interest of a recipient of payments under title XVI of the Act would be served thereby, certification of payment may be made by the Administration, regardless of the legal competency or incompetency of the recipient eligible thereto, either for direct payment to such recipient, or for his use and benefit to a relative or some other person (including an appropriate public or private agency) selected by the Administration as the "representative payee" of the recipient. (2) In the case of an individual who is eligible for benefits solely on the basis of disability and who is medically determined to be a drug addict or an alcoholic, the Administration will provide for the payment of benefits to a representative payee, as specified by section 1631(a)(2) of the Act. This may be accomplished through a variety of arrangements, such as certification of payment to an individual interested in or concerned with the eligible individual or eligible spouse, to a treatment facility or center providing services to such individual or spouse, to a social services agency concerned with drug addiction or alcohol-

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ism, or to any other individual or agency which is found appropriate for this purpose. These arrangements will be utilized to the end that payment of benefits for all such individuals will be made to a representative payee. (3) When it appears that an individual (other than a disabled person who is medically determined to be a drug addict or an alcoholic) who is receiving payments may be incapable of managing such payments in his own interest, the Administration shall, if such individual is age 18 or over, and has not been adjudged legally incompetent, continue payments to such individual pending a determination as to his capability of managing payments and the selection of a representative payee. (See Subpart N of this part for provisions relating to determinations and administrative and judicial review of determinations.)

(b) *Effect of payments to representative payee.* Payments made in accordance with paragraph (a) of this section to a representative payee of an eligible individual or eligible spouse shall constitute payments to such eligible individual or eligible spouse.